

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

Mary B. Smith,  
Plaintiff

v.

David C. Nicholson, Trustee of the  
D.J.J. Realty Trust,  
Dominic M. Sawicki, Trustee of the  
Dominic M. Sawicki Nominee Trust, and  
Carol Ann Whitney and Glenn Whitney,  
Defendants

Civil Action No. 04-01-04

JURY TRIAL DEMANDED

04cv10632 MEL

March 31, 2004

MAGISTRATE JUDGE *Cohen*

COMPLAINT

Plaintiff, Mary B. Smith, by her attorney, Alfred J. Smith Jr., Esq., for her  
Complaint, hereby states:

**PRELIMINARY STATEMENT**

1. This is a civil action in which the Plaintiff seeks an award of damages for injuries suffered as the result of the negligence of the defendants, for pain and suffering, disability, past and future medical expenses and care, plus punitive damages, costs and attorneys fees.

**JURISDICTION**

2. Jurisdiction is conferred on the Court by 28 U.S.C. section 1332 since this action arises under Diversity of Citizenship as the parties are citizens of different states. Venue is proper in this District as Defendants, on information and belief, are residents of the Commonwealth of Massachusetts. Plaintiff, is a resident of Southbury, Connecticut. The amount in controversy exceeds \$800,000 exclusive

RECEIPT # 54949  
AMOUNT \$ 150 CASH  
SUMMONS ISSUED Y-3  
LOCAL RULE #1  
WAIVER FORM  
NOT ISSUED  
DEPT. CLK.  
DATE 4-01-04

of interest, attorneys fees and costs.

### **PARTIES**

3. The Plaintiff, Mary B. Smith (SMITH), is a resident of Southbury, Connecticut.
4. Upon information and belief, at all times relevant to this action, Defendants Nicholson and the Whitneys were, and are, residents of Harwich, Massachusetts, and Sawicki was, and is, a resident of Belmont, Massachusetts.

### **COUNT ONE**

5. On, or about, April 6, 2002 SMITH entered upon Old Lantern Lane, part of a Subdivision Plan of Land in Harwich, Barnstable County, Massachusetts, traveling to the residence of Defendant, Nicholson, after attending the funeral of his wife, Patricia Nicholson, at the invitation of Defendant Nicholson. On information and belief, Old Lantern Lane is a private road or thoroughfare, in this Subdivision, owned and under the control of the Defendants who are jointly and severally liable and responsible for its maintenance and repair.
6. Due to the negligence of the Defendants in maintaining the surface of this private road or thoroughfare, the Plaintiff SMITH fell on loose rocks and impediments, fracturing and displacing her left femur. SMITH was subsequently hospitalized, underwent surgery (including having a metal plate inserted at the site of the injury), was confined to a rehabilitation facility for almost two months, and is partially disabled. As the result of this disability, SMITH suffered a fall later in 2003 in which she sustained three fractured vertebrae.

7. Due to the negligence of the Defendants, the Plaintiff has sustained medical bills in excess of \$50,000.00, and will incur additional medical and rehabilitation expenses in the future.

8. SMITH seeks damages in excess of \$50,000.00 for past and future medical expenses, satisfaction of liens, interest, costs and attorneys fees under this COUNT.

### **COUNT TWO**

9. The information contained in COUNT ONE, paragraphs 5-7, above, is repeated and made a part of COUNT TWO.

10. Due to the negligence of the Defendants, SMITH has, is, and will continue to experience pain and suffering on account of her injuries.

11. SMITH seeks damages in excess of \$250,000.00 for past, current and future pain and suffering, punitive damages, interest, costs and attorneys fees under this COUNT.

### **COUNT THREE**

12. The information contained in COUNT ONE, paragraphs 5-7, above, is repeated and made a part of COUNT THREE.

13. Due to the negligence of the Defendants, SMITH is disabled and is unable to provide for herself and is required to rely on the help and assistance of others in her daily activities. Prior to her injuries and subsequent disability, SMITH was active, walking for pleasure each day, handling yardwork and housework and was self-sufficient. Her injuries and disability, and her forced inactivity, has

affected her health, and will continue to affect her health in the future.

SMITH seeks damages, including punitive damages, in excess of \$500,000.00 for her disability, and for the costs for her present and future care, interest, costs and attorneys fees under this COUNT.

### **REQUEST FOR RELIEF**

The Plaintiff, having been damaged by the actions and negligence of the Defendants, seeks the following forms of relief:

1. Compensatory damages, including damages for pain and suffering, and costs for her current and future health care,
2. Punitive damages,
3. Attorneys fees, interest and costs,
4. Any other relief the Court deems just and equitable.

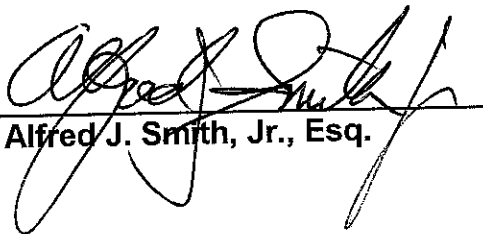
**PLAINTIFF,  
MARY B. SMITH**

By 

Alfred J. Smith, Jr., Esq. (CT 01381)  
706 Bedford Street  
Stamford, CT 06901  
Tel. (203) 359-3200  
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E-mail: [ajslaw706@aol.com](mailto:ajslaw706@aol.com)

### **CERTIFICATION**

I, Alfred J. Smith, Jr., hereby certify that I am licensed to practice law in the Commonwealth of Massachusetts, having been so admitted on June 12, 1978, BBO# 467700, and that I was also admitted to practice before the United States District Court, District of Massachusetts, on December 6, 1978.



Alfred J. Smith, Jr., Esq.

## CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

Mary B. Smith

## DEFENDANTS

David C. Nicholson, Trustee, et al

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF New Haven (CT)  
(EXCEPT IN U.S. PLAINTIFF CASES)COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT Barnstable (MA)  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Alfred J. Smith, Jr., Esq.  
706 Bedford Street  
Stamford, CT 06901 (203) 359-3200

ATTORNEYS (IF KNOWN)

04 CV 10632 MEL

## II. BASIS OF JURISDICTION

(PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☐ 3 Federal Question (U.S. Government Not a Party)  
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- |   | PTF                                   | DEF                                   |   | PTF                        | DEF                        |
|---|---------------------------------------|---------------------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1            | <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2            | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3            | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

## IV. NATURE OF SUIT

(PLACE AN "X" IN ONE BOX ONLY)

## CONTRACT

- ☐ 110 Insurance  
☐ 120 Marine  
☐ 130 Miller Act  
☐ 140 Negotiable Instrument  
☐ 150 Recovery of Overpayment & Enforcement of Judgment  
☐ 151 Medicare Act  
☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)  
☐ 153 Recovery of Overpayment of Veteran's Benefits  
☐ 160 Stockholders' Suits  
☐ 190 Other Contract  
☐ 195 Contract Product Liability

## TORTS

## PERSONAL INJURY

- ☐ 310 Airplane  
☐ 315 Airplane Product Liability  
☐ 320 Assault, Libel & Slander  
☐ 330 Federal Employers' Liability  
☐ 340 Marine  
☐ 345 Marine Product Liability  
☐ 350 Motor Vehicle  
☐ 355 Motor Vehicle Product Liability  
☒ 360 Other Personal Injury

## PERSONAL INJURY

- ☐ 362 Personal Injury — Med. Malpractice  
☐ 365 Personal Injury — Product Liability  
☐ 368 Asbestos Personal Injury Product Liability

## PERSONAL PROPERTY

- ☐ 370 Other Fraud  
☐ 371 Truth in Lending  
☐ 380 Other Personal Property Damage  
☐ 385 Property Damage Product Liability

## FORFEITURE/PENALTY

- ☐ 610 Agriculture  
☐ 620 Other Food & Drug  
☐ 625 Drug Related Seizure of Property 21 USC 881  
☐ 630 Liquor Laws  
☐ 640 R.R. & Truck  
☐ 650 Airline Regs.  
☐ 660 Occupational Safety/Health  
☐ 690 Other

## BANKRUPTCY

- ☐ 422 Appeal 28 USC 158  
☐ 423 Withdrawal 28 USC 157

## PROPERTY RIGHTS

- ☐ 820 Copyrights  
☐ 830 Patent  
☐ 840 Trademark

## OTHER STATUTES

- ☐ 400 State Reapportionment  
☐ 410 Antitrust  
☐ 430 Banks and Banking  
☐ 450 Commerce/ICC Rates/etc.  
☐ 460 Deportation  
☐ 470 Racketeer Influenced and Corrupt Organizations  
☐ 810 Selective Service  
☐ 850 Securities/Commodities/Exchange  
☐ 875 Customer Challenge 12 USC 3410  
☐ 891 Agricultural Acts  
☐ 892 Economic Stabilization Act  
☐ 893 Environmental Matters  
☐ 894 Energy Allocation Act  
☐ 895 Freedom of Information Act  
☐ 900 Appeal of Fee Determination Under Equal Access to Justice  
☐ 950 Constitutionality of State Statutes  
☐ 990 Other Statutory Actions

## REAL PROPERTY

- ☐ 210 Land Condemnation  
☐ 220 Foreclosure  
☐ 230 Rent Lease & Ejectment  
☐ 240 Torts to Land  
☐ 245 Tort Product Liability  
☐ 290 All Other Real Property

## CIVIL RIGHTS

- ☐ 441 Voting  
☐ 442 Employment  
☐ 443 Housing/Accommodations  
☐ 444 Welfare  
☐ 440 Other Civil Rights

## PRISONER PETITIONS

- ☐ 510 Motions to Vacate Sentence  
☐ 530 Habeas Corpus:  
☐ 530 General  
☐ 535 Death Penalty  
☐ 540 Mandamus & Other  
☐ 550 Civil Rights  
☐ 555 Prison Condition

## LABOR

- ☐ 710 Fair Labor Standards Act  
☐ 720 Labor/Mgmt. Relations  
☐ 730 Labor/Mgmt. Reporting & Disclosure Act  
☐ 740 Railway Labor Act  
☐ 790 Other Labor Litigation  
☐ 791 Empl. Ret. Inc. Security Act

## SOCIAL SECURITY

- ☐ 861 HIA (1395ff)  
☐ 862 Black Lung (923)  
☐ 863 DIWC/DIWW (405(g))  
☐ 864 SSID Title XVI  
☐ 865 RSI (405(g))

## FEDERAL TAX SUITS

- ☐ 870 Taxes (U.S. Plaintiff or Defendant)  
☐ 871 IRS — Third Party 26 USC 7609

## V. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding  
☐ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from another district (specify)  
☐ 6 Multidistrict Litigation  
☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

28 U.S.C., Section 1332, Diversity of Citizenship (Negligence, Personal Injury)

## VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION  
☐ UNDER F.R.C.P. 23

DEMAND \$

Over \$50,000.00

CHECK YES only if demanded in complaint:

JURY DEMAND:

☒ YES☐ NO

## VIII. RELATED CASE(S) IF ANY

(See Instructions):

JUDGE

DOCKET NUMBER

DATE

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

## 1. TITLE OF CASE (NAME OF FIRST PARTY ON EACH SIDE ONLY)

MARY B. SMITH V. DAVID C. NICHOLSON, ET AL

## 2. CATEGORY IN WHICH THE CASE BELONGS BASED UPON THE NUMBERED NATURE OF SUIT CODE LISTED ON THE CIVIL COVER SHEET. (SEE LOCAL RULE 40.1(A)(1)).

☐ I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.☐ II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820\*, 830\*, 840\*, 850, 890, 892-894, 895, 950.\*Also complete AO 120 or AO 121  
for patent, trademark or copyright cases☒ III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.☐ IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.☐ V. 150, 152, 153.

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## 3. TITLE AND NUMBER, IF ANY, OF RELATED CASES. (SEE LOCAL RULE 40.1(G)). IF MORE THAN ONE PRIOR RELATED CASE HAS BEEN FILED IN THIS DISTRICT PLEASE INDICATE THE TITLE AND NUMBER OF THE FIRST FILED CASE IN THIS COURT.

## 4. HAS A PRIOR ACTION BETWEEN THE SAME PARTIES AND BASED ON THE SAME CLAIM EVER BEEN FILED IN THIS COURT?

YES

☒ NO

## 5. DOES THE COMPLAINT IN THIS CASE QUESTION THE CONSTITUTIONALITY OF AN ACT OF CONGRESS AFFECTING THE PUBLIC INTEREST? (SEE 28 USC §2403)

YES

☒ NO

IF SO, IS THE U.S.A. OR AN OFFICER, AGENT OR EMPLOYEE OF THE U.S. A PARTY?

YES

☒ NO

## 6. IS THIS CASE REQUIRED TO BE HEARD AND DETERMINED BY A DISTRICT COURT OF THREE JUDGES PURSUANT TO TITLE 28 USC §2284?

YES

☒ NO

## 7. DO ALL OF THE PARTIES IN THIS ACTION, EXCLUDING GOVERNMENTAL AGENCIES OF THE UNITED STATES AND THE COMMONWEALTH OF MASSACHUSETTS ("GOVERNMENTAL AGENCIES"), RESIDING IN MASSACHUSETTS RESIDE IN THE SAME DIVISION? - (SEE LOCAL RULE 40.1(D)).

YES

NO

A. IF YES, IN WHICH DIVISION DO ALL OF THE NON-GOVERNMENTAL PARTIES RESIDE?

EASTERN DIVISION

CENTRAL DIVISION

WESTERN DIVISION

## B. IF NO, IN WHICH DIVISION DO THE MAJORITY OF THE PLAINTIFFS OR THE ONLY PARTIES, EXCLUDING GOVERNMENTAL AGENCIES, RESIDING IN MASSACHUSETTS RESIDE?

EASTERN DIVISION

CENTRAL DIVISION

WESTERN DIVISION

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME

ALAN J. SMITH JR ESQ

ADDRESS

706 BEVERLY ST. STAMFORD, CT 06901

TELEPHONE NO.

(203) 359-3200